

EXHIBIT A

Clerk of the Superior Court
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Representing ☐ Self, without a Lawyer or ☒ Attorney for ☒ Plaintiff OR ☐ Defendant

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

Alyssa E. Nessel, a single woman
Name of Plaintiff

Case No. CV2021-014197

JDM Golf, LLC
Name of Defendant

WAIVER OF SERVICE

A.R.C.P. Rule 4 (f)

TO: Nicholas J. Enoch
(Name of Plaintiff or Plaintiff's Attorney)

ACKNOWLEDGMENT OF WAIVER OF SERVICE. I acknowledge receipt of your request that I waive service of a summons in regards to the above referenced action.

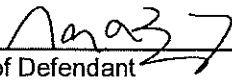
I also have received a copy of the **Complaint** and **Certificate of Compulsory Arbitration** in the action, **two** copies of this **Waiver of Service**, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by the Arizona Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

DEFAULT JUDGMENT. I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within sixty (60) days after this waiver was sent, which was 12/06/2022 (date sent), or within ninety (90) days after that date if the request was sent outside the United States.

I swear or affirm under penalty of perjury that the contents of this Waiver are true and correct to the best of my knowledge and belief.


Signature of Defendant

December 19, 2022
Date

Jay A. Zweig, Ballard Spahr LLP - Attorneys for JDM Golf, LLC
Printed Name of Defendant

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to cooperate in saving unnecessary cost of service of the summons and a pleading. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States, to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought into an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on this waiver form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

LUBIN & ENOCH, P.C.

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

Alyssa E. Nessel, a single woman,

Plaintiff,

v.

JDM Golf, LLC, an Arizona limited
 liability company; John and Jane Doe,
 husband and wife;

Defendants.

No. CV2021-014197

FIRST AMENDED COMPLAINT

Discovery Tier 2

(Assigned to the Honorable Margaret
 Mahoney)

Plaintiff, Alyssa E. Nessel ("Nessel"), by and through her attorneys at Lubin & Enoch, P.C., brings this action against JDM Golf, LLC ("JDM Golf") doing business as the Wigwam Resort and Golf (the "Wigwam"), to recover compensation, liquidated and punitive damages, and attorneys' fees and costs pursuant to the hostile work environment, retaliation, and wrongful termination provisions of the Arizona Civil Rights Act ("ACRA"), A.R.S. § 41-1461, *et seq.* and Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et seq.* Plaintiff also brings this action against John and Jane Doe, husband and wife

1 (the “Does”), for sexual assault and battery, and for negligent infliction of emotional distress.

2 **INTRODUCTION**

3 1. This case concerns the Wigwam’s retaliation against Nessel and her
4 wrongful termination following the Wigwam’s attempt to bury an investigation into a
5 sexual assault and battery against her perpetrated by one of its patrons.
6

7 2. This case also concerns a patron’s sexual assault and battery against Nessel
8 while she was employed at the Wigwam.

9 **JURISDICTION AND VENUE**

10 3. This Court has jurisdiction over this case pursuant to 42 U.S.C. § 2000e-5(f),
11 Ariz. Const. art. VI § 14, and A.R.S § 12-123.
12

13 4. This Court has personal jurisdiction over JDM Golf because it is an Arizona-
14 domiciled limited liability company (“LLC”), licensed and doing business in Arizona.
15 Further, the events that give rise to the causes of action occurred within Maricopa County as
16 a result of JDM Golf’s conduct within the county.
17

18 5. This Court has personal jurisdiction over the Does because the events that
19 give rise to the causes of action occurred within Maricopa County as a result of the Does
20 conduct within the county, and they reside therein.

21 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.
22

23 **PARTIES**

24 7. Nessel is currently a resident of Sun Lakes, Arizona in Maricopa County. At
25 all times relevant to this complaint, Nessel resided in Maricopa County.

26 8. Nessel is a former employee of JDM Golf. She was employed as a beverage
27 cart server at the Wigwam.
28

1 9. The Wigwam is a 440-acre, full-service resort that offers three 18-hole golf
2 courses. Upon information and belief, it is one of the many resorts and golf courses owned
3 and operated by JDM Golf across the country.
4

5 10. JDM Golf is an Arizona-domiciled LLC, licensed and doing business in
6 Arizona. Its principal place of business is in Arizona at 2400 East Arizona Biltmore Circle,
7 Building 2, Suite 1270, Phoenix, Arizona 85016.
8

9 11. At all relevant times, JDM Golf was responsible for the hiring and firing
10 decisions of its beverage cart servers, including Nessel, supervising and controlling Nessel's
11 work schedules and conditions of employment, determining the rate and method of payment,
12 and maintaining any employment records that exist.
13

14 12. JDM Golf may be served with process through its registered agent, Mel
15 Schultz, at 2400 East Arizona Biltmore Circle, Building 2, Suite 1270, Phoenix, Arizona
16 85016.
17

18 13. The Does are now, and at all times relevant hereto have been, husband and
19 wife, constituting a marital community under the laws of the state of Arizona. The Does are
20 fictitiously named defendants pursuant to Arizona Rule of Civil Procedure 10(d). Once their
21 true names are discovered, this complaint shall be amended accordingly.
22

23 14. The acts and omissions undertaken by the Does were performed as agents
24 and for the benefit of the marital community.
25

GENERAL ALLEGATIONS

26 15. On September 13, 2019, the Glendale Chamber of Commerce hosted the
27 20th Annual Excellence in Education Golf Outing. This golf tournament was held at the
28 Wigwam located at 300 East Wigwam Boulevard, Litchfield Park, Arizona 85340.

1 16. Nessel, who was employed by JDM Golf until October 16, 2019, was
2 scheduled to work during the event.

3 17. That morning, Nessel was approached by a group of golfers while serving
4 beverages at a hydration station set up for the event. The group surrounded her and one of
5 the men (“Doe” or the “perpetrator”) violently grabbed her buttocks and attempted to rip
6 off her skirt (the “incident”).
7

8 18. Several nearby golfers witnessed the incident. Dr. Karla Murphy, a
9 professor at Arizona State University and one of the witnesses, brought the incident to the
10 attention of two Wigwam employees. When she noticed how shaken Nessel was from the
11 incident, she insisted Nessel be escorted off the course.
12

13 19. Wigwam ambassadors led Nessel to the office of her supervisor, Mr. Leo
14 Simonetta (“Simonetta”), where they were joined by Wigwam security personnel. There,
15 she was asked for a description of the incident and perpetrator, which she provided, and
16 Simonetta recorded the incident in her human resources (“HR”) file.
17

18 20. During the questioning, Nessel was asked if she would like to press
19 charges. She indicated she would and requested the police be called.
20

21 21. The Maricopa County Sherriff’s Office (the “sheriff deputies” or
22 “deputies”) responded to the call. After the sheriff deputies arrived on scene, Wigwam
23 security personnel escorted the deputies onto the course so that the perpetrator could be
24 identified and detained.

25 22. The two-foursome groups playing near her location at the time of the
26 incident were the focus of the search. Those groups were identified from the tournament
27
28

1 participant sheet and the schedule of each foursome on the course. Doe and any witnesses
2 were most likely to be part of those two foursomes. Those two foursomes are circled on
3 the tournament participant sheet, attached hereto as **Exhibit A**.

4
5 23. Despite this focused search, the sheriff deputies and Wigwam security
6 personnel were unsuccessful at locating the perpetrator. Upon their return, the deputies
7 asked Nessel to sit at the clubhouse entrance and attempt to identify the perpetrator as
8 foursome groups returned from the course. This continued for hours but was similarly
9 unsuccessful.

10
11 24. Sometime later, Simonetta asked Nessel to follow him into the clubhouse
12 restaurant, Red's, where a luncheon was being hosted for the tournament participants and
13 their families. Upon entering, Nessel immediately spotted the perpetrator. She pointed
14 him out to Simonetta, specifically identifying the man as wearing a blue shirt. Simonetta
15 pointed to the same individual, and Nessel confirmed that was the perpetrator.

16
17 25. Simonetta directed Nessel to return to the pro shop to do paperwork for the
18 sales she had completed before the incident. Nessel was relieved the situation was under
19 control and complied with the direction.

20
21 26. The sheriff deputies were still at the resort. However, despite Simonetta
22 giving Nessel the impression he would inform the deputies of the perpetrator's
23 whereabouts, he did not identify the perpetrator to them, and the deputies left without
24 apprehending anyone. Indeed, Simonetta did not even indicate to the deputies that Nessel
25 had identified the perpetrator when the perpetrator was still on the resort property.

26
27 27. Neither did Simonetta take any steps to obtain Doe's personal information
28

1 himself. In fact, after the incident transpired, neither Simonetta nor the Wigwam's HR
2 department reached out to Nessel regarding the incident.

3
4 28. The perpetrator remains unidentified; however, potential perpetrators, as
5 identified on the tournament participant sheet, include Ron Castro, Scott Spillman, Matt
6 Farmer, Mike Walters, Justin Oquist, Brian Schmidt, John Pruitt, and Corey Pankin. Upon
7 information and belief, one of these men is John Doe.

8
9 29. Following the incident, Nessel requested the contact information of
10 Wigwam's internal security personnel because she no longer felt safe working at the
11 Wigwam.

12 30. Shortly after the incident, one of Nessel's co-workers began sexually
13 harassing her via text messages. Nessel brought the text messages to HR and complained
14 about the harassment.

15
16 31. A few days later, on October 16, 2019, Simonetta terminated Nessel's
17 employment, alleging that she had been late to work. Nessel believes she was late to work
18 twice but recalls that other employees were frequently late and were never terminated or
19 even reprimanded for it. Nessel believes that she was disciplined and terminated in
20 retaliation for complaining about the sexual assault and harassment that she endured.

21
22 32. In hostile work environment claims, an employer may be liable for the
23 harassing behavior of its customers and patrons "where the employer either ratifies or
24 acquiesces in the harassment by not taking immediate and/or corrective actions." *Folkerson*
25 *v. Circus Circus Enters., Inc.*, 107 F.3d 754, 756 (9th Cir. 1997). However, in this case, it
26 is not only the employer's inaction to correct the harassing behavior but also its active
27
28

1 interference in the quick and accurate identification of the perpetrator that has caused the
2 perpetrator to remain unidentified and resulted in further harm to Nessel.

3 33. Specifically, Simonetta's actions in preventing the perpetrator from being
4 identified by the sheriff deputies effectively ratified or otherwise condoned the assault
5 against Nessel.
6

7 34. Finally, JDM Golf's decision to terminate Nessel's employment was in
8 retaliation for reporting the sexual assault and harassment she endured.
9

10 **CONDITIONS PRECEDENT**

11 35. On July 7, 2020, Nessel filed a charge of discrimination alleging
12 discrimination on the basis of sex and retaliation with the Equal Employment Opportunity
13 Commission ("EEOC") as Charge No. 540-2020-03757. On August 22, 2022, the EEOC
14 issued her a notice of her right-to-sue.
15

16 36. Nessel has fully exhausted her administrative remedies on all claims herein.

17 **CAUSES OF ACTION**

18 **Count I: Violation of the Title VII of the Civil Rights of 1964**

19 37. Nessel realleges and incorporates by reference the foregoing allegations as
20 if fully set forth therein.

21 **A. Coverage Under Title VII**

22 38. At all times relevant hereto, Nessel was an "employee" of JDM Golf within
23 the meaning of Title VII, 42 U.S.C. § 2000e(f).
24

25 39. At all times relevant hereto, JDM Golf was an "employer" within the
26 meaning of Title VII, 42 U.S.C. § 2000e(b).
27

28 40. JDM Golf is a former employer that provided daily guidance and

1 instruction to Nessel.

2 41. Prior to and at the time of her termination, Nessel was qualified for
3 employment as a beverage cart server.
4

5 42. JDM Golf was put on notice by Nessel that she had been subjected to a
6 sexual assault and battery by one of JDM Golf's patrons. Nessel verbally reported the
7 assault immediately after it occurred. Wigwam security personnel asked her for a
8 description of the events and the perpetrator while Simonetta was present. The incident
9 was recorded in her HR file. Simonetta and Wigwam security personnel were present
10 when Nessel agreed to press charges. Finally, Nessel identified Doe directly to Simonetta.
11

12 43. JDM Golf was further put on notice by Nessel that she had been subjected
13 to sexual harassment from one of her co-workers. Nessel verbally reported the harassment
14 to HR. In response she was contacted by an HR representative over telephone and text
15 messaging regarding her allegations of sexual harassment.
16

17 44. JDM Golf had actual knowledge of the hostile work environment to which
18 Nessel was subjected by her co-worker but did nothing to remedy the discrimination.
19

20 45. Shortly after Nessel reported the sexual harassment by her co-worker, she
21 was contacted by a representative from HR. They held a telephone conversation on
22 October 16, 2019, where Nessel provided the HR representative with all the salient facts to
23 aid in their investigation.

24 46. On October 17, 2019, Nessel sent the HR representative a follow up text
25 message again explaining the facts and circumstances of the sexual harassment.
26

27 47. On October 18, 2019, Nessel was called in for a meeting with her
28

1 supervisors where her employment was terminated. Her official last day of work was on
2 October 16, 2019.

3
4 48. Nessel has been damaged by JDM Golf's violation of Title VII inasmuch as
5 Nessel has been:

6 (1) Without employment from October 2019 to present.

7 (2) Unable to identify the perpetrator and enforce her right to press charges.

8 **B. Sexual Discrimination**

9
10 49. Under federal law, it is unlawful for an employer to "discharge any
11 individual, or otherwise to discriminate against any individual with respect to [his or her]
12 compensation, terms, conditions, or privileges of employment, because of such individual's
13 . . . sex" 42 U.S.C § 2000e-2(a).

14 50. The hostile work environment, that JDM Golf knew about and aided in
15 continuing, was so severe and pervasive that Nessel's employment was terminated for
16 reporting the sexual assault and harassment, thereby materially changing the conditions of
17 her employment.

18
19 51. As a result of the above-mentioned conduct, JDM Golf violated the
20 prohibition against sexual discrimination found in Title VII.

21 **C. Retaliation**

22
23 52. Under federal law, it is unlawful for "an employer to discriminate against
24 any of [his or her] employees . . . because [he or she] has opposed any practice made an
25 unlawful employment practice by this subchapter, or because [he or she] has made a
26 charge, testified, assisted, or participated in any manner in an investigation, proceeding, or
27 hearing under this subchapter." 42 U.S.C. § 2000e-3(a).
28

1 53. Nessel was terminated because she complained about the sexual harassment
2 and hostile work environment that JDM Golf allowed to exist. This is evidenced by JDM
3 Golf's decision to terminate her employment within days of her reporting sexual
4 harassment by one of her co-workers and its attempts to bury the investigation into the
5 sexual assault by one of its patrons.
6

7 54. The fact that she was late to work was merely pretextual. Other employees
8 were frequently late to work but were never terminated or even reprimanded for it.
9

10 55. As a result of the above-mentioned conduct, JDM Golf violated the
11 prohibition against retaliation for reporting and complaining about sexual harassment and
12 discrimination found in Title VII.

13 **Count II: Violation of the Arizona Civil Rights Act**

14 56. Nessel realleges and incorporates by reference the foregoing allegations as
15 if fully set forth therein.
16

17 **A. Coverage Under ACRA**

18 57. At all times relevant hereto, Nessel was an "employee" of JDM Golf within
19 the meaning of ACRA, A.R.S. § 41-1461(5).

20 58. At all times relevant hereto, JDM Golf was an "employer" within the
21 meaning of ACRA, A.R.S. § 41-1461(6).
22

23 59. JDM Golf is a former employer that provided daily guidance and
24 instruction to Nessel.

25 60. Prior to and at the time of her termination, Nessel was qualified for
26 employment as a beverage cart server.

27 61. JDM Golf was put on notice by Nessel that she had been subjected to a
28

1 sexual assault and battery by one of JDM Golf's patrons. Nessel verbally reported the
2 assault immediately after it occurred. Wigwam security personnel asked her for a
3 description of the events and the perpetrator while Simonetta was present. The incident
4 was recorded in her HR file. Simonetta and Wigwam security personnel were present
5 when Nessel agreed to press charges. Finally, Nessel identified Doe directly to Simonetta.

7 62. JDM Golf was further put on notice by Nessel that she had been subjected
8 to sexual harassment from one of her co-workers. Nessel verbally reported the harassment
9 to HR. In response she was contacted by an HR representative over telephone and text
10 messaging regarding her allegations of sexual harassment.
11

12 63. JDM Golf had actual knowledge of the hostile work environment to which
13 Nessel was subjected by her co-worker but did nothing to remedy the discrimination.
14

15 64. Shortly after Nessel reported the sexual harassment by her co-worker, she
16 was contacted by a representative from HR. They held a telephone conversation on
17 October 16, 2019, where Nessel provided the HR representative with all the salient facts to
18 aid in their investigation.

19 65. On October 17, 2019, Nessel sent the HR representative a follow up text
20 message again explaining the facts and circumstances of the sexual harassment.
21

22 66. On October 18, 2019, Nessel was called in for a meeting with her
23 supervisors where her employment was terminated, ostensibly for being late to work. Her
24 official last day of work was on October 16, 2019.

25 67. Nessel has been damaged by JDM Golf's violation of ACRA inasmuch as
26 Nessel:
27
28

1 (a) Has been without employment from October of 2019 to present.

2 (b) Has been unable to identify the perpetrator and enforce her right to press
3 charges.
4

5 **B. Sexual Discrimination**

6 68. Under Arizona law, it is unlawful to “discriminate against any individual
7 with respect to the individual's compensation, terms, conditions or privileges of
8 employment because of the individual's . . . sex . . .” A.R.S. § 41-1463(B)(1).

9 69. As a result of the above-mentioned conduct, JDM Golf violated the
10 prohibition against sexual discrimination found in ACRA, A.R.S. § 41-1463(B)(1).
11

12 **C. Retaliation**

13 70. Under Arizona law, it is unlawful for an employer to “discriminate against
14 any of [his or her] employees or applicants for employment . . . because the member or
15 applicant has opposed any practice which is an unlawful employment practice under this
16 article or has made a charge, testified, assisted or participated in any manner in an
17 investigation, proceeding or hearing under article 6 of this chapter.” A.R.S. § 41-1464(A).
18

19 71. As a result of the above-mentioned conduct, JDM Golf violated the
20 prohibition against retaliation for reporting and complaining about sexual harassment and
21 discrimination found in ACRA, A.R.S. § 41-1464(A).
22
23
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Count III: Common Law Tort of Assault
(Against the Does Only)

72. Nessel realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

73. Under Arizona law, a person commits the tort of assault if that person “intended to cause harm or offensive contact¹ with [another that results in the other person feeling] apprehension of an immediate harmful or offensive contact.” Revised Arizona Jury Instructions (Civil 6th ed.) Intentional Torts 1 (Assault); *see* Restatement (Second) of Torts § 21; *Garcia v. U.S.*, 826 F.2d 806, 809 n. 9 (9th Cir. 1987).

74. As a result of the above-mentioned conduct, Nessel experienced fear and apprehension and harm to her self-image and personal dignity. She now seeks to recover compensatory and punitive damages.²

Count IV: Common Law Tort of Battery
(Against the Does Only)

75. Nessel realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

76. Under Arizona common law, “a battery is a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff . . . to suffer such a contact.” *Meadows v. Guptill*, 856 F.Supp. 1362, 1371 (D.Ariz. 1993) (finding offensive

¹ “A contact is offensive if it would offend a reasonable person.” Revised Arizona Jury Instructions (Civil 6th ed.) Intentional Torts 1 (Assault).

² Nessel does not need to prove the extent of her damages as damages are presumed in intentional torts, such as assault and battery, where the tort itself seeks to penalize intentional conduct. Revised Arizona Jury Instructions (Civil 6th ed.) Intentional Torts 1 (Assault), n. 3, & Intentional Torts 2 (Battery), n. 3.

1 touching giving rise to a claim for battery where Defendant patted Plaintiff's buttocks and
 2 grabbed or tugged on Plaintiff's blouse); *see* Revised Arizona Jury Instructions (Civil 6th
 3 ed.) Intentional Torts 2 (Battery); Restatement (Second) of Torts § 18; *Garcia*, 826 F.2d at
 4 809 n. 9.

6 77. As a result of the above-mentioned conduct, Nessel experienced mental³
 7 and emotional⁴ distress and suffered harm to her personal dignity and self-image.

8 78. Nessel now seeks to recover compensatory and punitive damages.⁵

9
 10 **Count V: Negligent Infliction of Emotional Distress**

11 **(Against the Does Only)**

12 79. Nessel realleges and incorporates by reference the foregoing paragraphs as
 13 if fully set forth herein.

14 80. Under Arizona common law, a claim for negligent infliction of emotional
 15 distress exists "[i]f the actor unintentionally causes emotional distress to another . . . [and]"

17
 18 ³ Arizona permits recovery for mental distress resulting from "a physical invasion of
 19 a person or the person's security." *Valley Nat'l Bank v. Brown*, 110 Ariz. 260, 265 (1974).

20 ⁴ Like in most dignitary tort cases where the facts are such that an ordinary person
 21 would feel distress, Nessel may recover even where the damage inflicted is difficult or even
 22 impossible to quantify. *See Johnson v. Pankratz*, 196 Ariz. 621, 623 (Ct.App. 2000) (citing
 23 Restatement (Second) of Torts § 13 (1965)); Dan D. Dobbs, *Dobbs Law of Remedies*, §
 24 7.1(2) (2d. ed. 1993). Specifically, battery claims traditionally permit recovery of general or
 25 presumed damages "of a substantial amount . . . merely by showing that the tort was
 26 committed at all." Dobbs, § 7.1(2). This includes proving the extent of her mental and
 27 emotional distress damages. *Id.*

28 ⁵ Punitive damages are recoverable under Arizona law upon a showing by clear and
 convincing evidence that the defendant's conduct was aggravated and outrageous, and that
 the defendant acted with an evil mind. *Meadows*, 856 F.Supp. at 1372 (citing *Linthicum v.*
Nationwide Life Ins. Co., 150 Ariz. 326, 331–32 (1986). An evil mind is shown where the
 defendant intended to cause injury or chose a course of conduct that knowingly created a
 substantial risk of harm to others. *Ranburger v. Southern Pacific Transp. Co.*, 157 Ariz. 551,
 553 (1988).

1 the actor (a) should have realized that his conduct involved an unreasonable risk of causing
2 the distress . . . and (b) from facts known to him should have realized that the distress, if it
3 were caused, might result in illness or bodily harm. . . .” *Quinn v. Turner*, 155 Ariz. 225,
4 228 (Ct. App. 1987) (quoting Restatement (Second) of Torts § 313(1) (1965) (internal
5 quotations omitted)).
6

7 81. Doe should have known that violently grabbing Nessel’s buttocks and
8 attempting to rip off her skirt would create an unreasonable risk of causing Nessel distress
9 and that such distress would result in illness or bodily harm.
10

11 82. As a result of the above-mentioned conduct, Nessel experienced mental and
12 emotional distress that manifested physically and suffered harm to her personal dignity and
13 self-image.
14

15 **DISCOVERY TIER**

16 83. Nessel realleges and incorporates by reference the foregoing paragraphs as if
17 fully set forth herein.

18 84. This case will likely involve discovery into JDM Golf’s anti-discrimination
19 and anti-harassment policies and practices, including, establishing by expert or lay witness
20 testimony, how such conduct is reported, processed, and resolved. It might also require
21 discovery into video and surveillance footage, Wigwam security personnel reports, and
22 testimony by Wigwam security personnel, management, and HR representatives and
23 witnesses from the golf tournament.
24

25 85. This case will also likely involve discovery into the misconduct of the Does,
26 including video and surveillance footage and testimony from witnesses.
27
28

1 86. This action involves intermediate complexity, requiring more than minimal
2 documentary evidence and more than a few witnesses.

3
4 87. The action will result in an award of more than \$300,000.

5 88. Accordingly, this court should assign discovery tier 3 for purposes of Rules
6 26.2(b)(3) and 26.2(c)(3)(C) of the Arizona Rules of Civil Procedure.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Nessel prays that she can recover from JDM Golf and the Does the
9 following:

10 A. Award Nessel compensatory and punitive damages in an amount appropriate
11 to the proof at trial. This would include the value of lost income;

12 B. Court costs and costs of litigation, including expert fees;

13 C. Attorneys' fees;

14 D. A declaratory judgment pursuant to the Uniform Declaratory Judgments Act,
15 A.R.S. § 12-1831, *et seq.*, that JDM Golf has violated Nessel's rights, privileges, protections,
16 compensation, benefits, and entitlements under the law, as alleged herein; and
17

18 E. Such other legal and equitable relief as the Court deems just.

19 DATED this 10th day of November 2022.

20 LUBIN & ENOCH, P.C.

21 /s/ Nicholas J. Enoch

22 Nicholas J. Enoch

23 Attorney for Plaintiff
24
25
26
27
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November 2022, I electronically transmitted the attached Complaint using the AZ-Turbo Court E-filing Online System.

/s/ Shana Battles

EXHIBIT A

Glendale Chamber of Commerce

Gold Course Pairings

Hole #	Player	Hole #	Player	Hole #	Player
18A	Shapiro, Harry	12A	Martinez, Ramon	6A	McDermott, Patrick
18A	Scalia, Tony	12A	Martin, Mark	6A	Sites, Ron
18A	Tanner, Lauri	12A	Holecheck, Joshua	6A	Mazza, John
18A	Froelich, Kelly	12A	Hoang, Jimmy	6A	Holdaway, Melissa
18B	Plitts, Josh	12B	Castro, Ron	6B	Covena, Washington
18B	Gonzalez, Steve	12B	Spillman, Scott	6B	Coyle, Chris
18B	Voss, Scott	12B	Farmer, Matt	6B	Martin, Rachele
18B	Byfield, Justin	12B	Walters, Mike	6B	Olivas, Rosa
17A	Mocariski, John	11A	Stewart, Nathan	5A	Smith, Stephen
17A	Standage, Jeff	11A	Francis, Michael	5A	Leonardi, Kyle
17A	Deschler, Derek	11A	Horie, Craig	5A	Cuttone, Joe
17A	Huggins, Randy	11A	Algeria, Charles	5A	Ruiz, Ryan
17B	Weis, Jason	11B	Oquist, Justin	5B	Jacobo, Joseph
17B	Merryman, Christine	11B	Schmidt, Brian	5B	Martin, Billy
17B	Munter, Anne	11B	Pruitt, John	5B	Jacobo, Manny
17B	Aker, Patricia	11B	Pankin, Corey	5B	Byron, Daniel
16A	Bannon, Peter	10A	Dellosa, Gary	4A	Spicola, Tony
16A	Mace, Alan	10A	Samuel, David	4A	Easton, Dave
16A	Mulvey, Kevin	10A	Thieken, Michelle	4A	Setacase, Joe
16A	Willbrand, Kevin	10A	Guerro, Victor	4A	Klimciw, Mike
16B	Valenzuela, Natalie	10B	Roberts, Dan — <i>helped</i>	4B	Carter, Scott
16B	Jauregui, George	10B	Edgar, Gary	4B	Pump, Steve
16B	Munakash, Nimer	10B	Moore, Robert	4B	Cox, Dan
16B	Winkel, Robert	10B	Flitton, Joseph	4B	TBD,
15A	Hernandez, Manual	9A	Ramsey, Dr. Ramsey Eric	3A	Parkin, Mike
15A	Miranda, Mellors	9A	Rocha, Bethany	3A	Del Rosal, Cesar
15A	Trombley, Joseph	9A	Bennett, Justin	3A	Keel, Chris
15A	Carey, Joey	9A	Murphy, Dr. Karla	3A	Tobin, Ben
15B	Kiefer, Greg	9B	Ernst, Ray	3B	Cipriano, Jerry
15B	Whalen, Joseph	9B	Luedeker, Todd	3B	Sims, Korey
15B	Guston, Ramon	9B	Stiver, Jerry	3B	Read, Adam
15B	Jacobson, Ryan	9B	Schmidlen, Andy	3B	Alejandro, Anthony
14A	Rodriguez, Luis	8A	Pena, Javier	2A	Flemm, David
14A	Brooks, Brooklyn	8A	Hancock, Jeff	2A	Wren, Ryan
14A	Pruitt, Gene	8A	Thomas, Justin	2A	Theele, Jay
14A	Gonzalez, Anthony	8A	Garrison, Kale	2A	Martin, Jason
14B	Brash, Zach	8B	Habaluyas, Kevin	2B	Ortega, David
14B	LoDuca, Anthony	8B	Polster, Travis	2B	Ortega, Dave
14B	Pritchard, Will	8B	Truong, Hieu	2B	Guerrero, Gabe
14B	Zangl, Wyatt	8B	Mehta, Janet	2B	Lopez, Eddie
13A	Penberthy, Jim	7A	Fulford, Briar	1A	Fillon, Andy
13A	Martinez, Scott	7A	Corona, Virginia	1A	Hulse, Russell
13A	Conaway, Sean	7A	Costa, Pua	1A	LaGanke, Bob
13A	Boykin, Ryan	7A	TBD,	1A	TBD,
13B	Smith, Matt	7B	Dana, William	1B	Crow, John
13B	Othon, Art	7B	Calhoun, Anthony	1B	Phelps, Kevin
13B	Delgado, Ray	7B	Engel, Shannon	1B	Caracciolo, Ryan
13B	Gamez, Adolfo	7B	Brown, Brandon	1B	TBD,

Granted with Modifications

See eSignature page

Clerk of the Superior Court
*** Electronically Filed ***
P. McKinley, Deputy
6/21/2022 8:00:00 AM
Filing ID 14454258

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR MARICOPA COUNTY**

10
11 Alyssa E. Nessel, a single woman,

12 Plaintiff,

13 v.

14 John and Jane Doe, husband and wife;

15 Defendants.
16
17

No. CV2021-014197

ORDER

18 The Court has reviewed Plaintiff's Motion Requesting Continuance on the
19 Dismissal Calendar ("Motion"), filed 6/6/22.
20

21 **IT IS ORDERED** vacating Court Administration's Notice of Placement on the
22 Dismissal Calendar as improvidently issued on 4/13/22 in contradiction to the Court's
23 Order filed 12/21/21.
24

25 Dated: _____
26

27 _____
28 Honorable Margaret R. Mahoney
Judge of the Superior Court

eSignature Page 1 of 1

Filing ID: 14454258 Case Number: CV2021-014197
Original Filing ID: 14396721

Granted with Modifications



/S/ Margaret Mahoney Date: 6/17/2022
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2021-014197

SIGNATURE DATE: 6/17/2022

E-FILING ID #: 14454258

FILED DATE: 6/21/2022 8:00:00 AM

NICHOLAS J ENOCH

COURT ADMIN-CIVIL-ARB DESK

LUBIN & ENOCH, P.C.

Nicholas J. Enoch, State Bar No. 016473
Kaitlyn A. Redfield-Ortiz, State Bar No. 030318
349 North Fourth Avenue
Phoenix, Arizona 85003-1505
Telephone: (602) 234-0008
Facsimile: (602) 626-3586
Email: nick@lubinandenoch.com
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**IN AND FOR MARICOPA COUNTY**

Alyssa E. Nessel, a single woman,

Plaintiff,

v.

John and Jane Doe, husband and wife;

Defendants.

No. CV2021-014197

**PLAINTIFF'S MOTION REQUESTING
CONTINUANCE ON THE DISMISSAL
CALEDAR**(Assigned to the Honorable Margaret
Mahoney)

Plaintiff, Alyssa E. Nessel, by and through her attorneys at Lubin & Enoch, P.C., hereby moves this Court pursuant to Arizona Rule of Civil Procedure ("Rule") 38.1(d)(2)(C) to continue this case on the Dismissal Calendar until July 28, 2023, without being dismissed.

On April 9, 2022, this Court issued a Notice of Placement on the Dismissal Calendar. However, on December 17, 2021, this Court entered an order allowing Ms. Nessel until Friday, December 30, 2022, to serve her Complaint. Placement of this case on the Dismissal Calendar implicitly conflicts with that order. Thus, Ms. Nessel seeks permission under Rule 38.1(d)(2)(C) to continue her case on the dismissal calendar until

1 July 28, 2023, which is 210 days after December 30, 2022, the date by which Ms. Nessel
2 must serve her complaint. *See* Rule 38.1(d)(1) (requiring the clerk or court administrator
3 to “place a civil action on the dismissal calendar if 210 days have passed since the action
4 was commenced”).
5

6 Plaintiff respectfully requests that the Court continue this action on the Dismissal
7 Calendar until July 28, 2023.
8

9 Dated this 6th day of June 2022.

10 LUBIN & ENOCH, P.C.

11
12 /s/ Kaitlyn A. Redfield-Ortiz
13 Kaitlyn A. Redfield-Ortiz
14 Attorney for Plaintiff

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 6th day of June 2022, I electronically transmitted the
17 attached Complaint using the AZ-Turbo Court E-filing Online System.
18

19 /s/ Shana Battles
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LUBIN & ENOCH, P.C.

Nicholas J. Enoch, State Bar No. 016473
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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

Alyssa E. Nessel, a single woman,

Plaintiff,

v.

John and Jane Doe, husband and wife;

Defendants.

No. CV2021-014197

NOTICE OF APPEARANCE

(Assigned to the Honorable Margaret
Mahoney)

Plaintiff, Alyssa E. Nessel, by and through undersigned counsel, hereby gives notice that attorney Morgan Bigelow, with Lubin & Enoch, P.C., has associated as an additional attorney of record in the above-captioned matter.

Dated this 24th day of May 2022.

LUBIN & ENOCH, P.C.

/s/ Nicholas J. Enoch

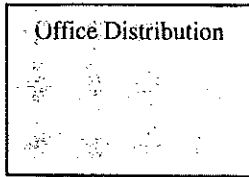
Nicholas J. Enoch

Attorney for Plaintiff

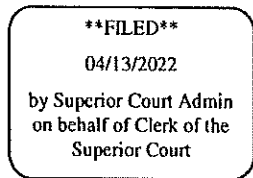
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2022, I electronically transmitted the attached Complaint using the AZ-Turbo Court E-filing Online System.

/s/ Shana Battles



SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY



04/09/2022

COURT ADMINISTRATION

Ct. Admin
Deputy

Case Number: CV2021-014197

Alyssa E Nessel

V.

John Doe

The Judge assigned to this action is the Honorable Margaret Mahoney

NOTICE OF PLACEMENT ON THE DISMISSAL CALENDAR

Pursuant to Rule 38.1(d) of the Arizona Rules of Civil Procedure, the parties and counsel are notified that this case is being placed on the dismissal calendar on 4/13/22. This case will be dismissed **without further notice on 06/13/2022** unless one of the following actions occurs prior to the date of dismissal:

1. A Joint Report and Proposed Scheduling order is filed;
2. A Comprehensive Pretrial Conference is set;
3. A final judgment, notice of decision, arbitration award, or dismissal is entered; or
4. A motion to continue on the dismissal calendar demonstrating good cause is filed and granted prior to the dismissal date.

See Rule 38.1(d)(2).

IT IS ORDERED placing this case on the dismissal calendar.

All documents required to be filed with the court should be electronically filed through Arizona Turbo Court at: www.azturbocourt.gov.

Superior Court of Maricopa County - integrated Court Information System

Endorsee Party Listing

Case Number: CV2021-014197

Party Name	Attorney Name	Bar ID: 016473
Alyssa E Nessel	Nicholas J Enoch	

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See eSignature page

Clerk of the Superior Court
*** Electronically Filed ***
P. McKinley, Deputy
12/21/2021 8:00:00 AM
Filing ID 13735836

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR MARICOPA COUNTY**

10 Alyssa E. Nessel, a single woman,

No. CV2021-014197

11 Plaintiff,

ORDER

12
13 v.

(Assigned to the Honorable Margaret Mahoney)

14 John and Jane Doe, husband and wife;

15 Defendants.
16

17 Pursuant to the Plaintiff's Motion for an Extension of Time to Serve Complaint and
18 good cause appearing therefor,

19 **IT IS HEREBY ORDERED** that the Plaintiff shall have up to and including
20 Friday, December 30, 2022 to serve the Complaint.
21
22
23

24 _____
Honorable Margaret R. Mahoney
25 Judge of the Superior Court
26
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eSignature Page 1 of 1

Filing ID: 13735836 Case Number: CV2021-014197
Original Filing ID: 13691269

Granted with Modifications



/S/ Margaret Mahoney Date: 12/17/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2021-014197

SIGNATURE DATE: 12/17/2021

E-FILING ID #: 13735836

FILED DATE: 12/21/2021 8:00:00 AM

NICHOLAS J ENOCH

LUBIN & ENOCH, P.C.

Nicholas J. Enoch, State Bar No. 016473
Kaitlyn A. Redfield-Ortiz, State Bar No. 030318
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Email: nick@lubinandenoch.com

Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR MARICOPA COUNTY**

Alyssa E. Nessel, a single woman,

Plaintiff,

v.

John and Jane Doe, husband and wife;

Defendants.

No. CV2021-014197

**PLAINTIFF'S NOTICE OF ERRATA
TO MOTION FOR EXTENSION OF
TIME TO SERVE THE COMPLAINT**

(Assigned to the Honorable Margaret R.
Mahoney)

Plaintiff, Alyssa E. Nessel ("Nessel"), by and through her attorneys at Lubin & Enoch, P.C., submits this Notice of Errata for her Motion for Extension of Time to Serve the Complaint adding Exhibit 1, which was inadvertently omitted from the Motion.

RESPECTFULLY SUBMITTED this 7th day of December 2021.

LUBIN & ENOCH, P.C.

/s/ Nicholas J. Enoch

Nicholas J. Enoch
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

The foregoing was filed via Turbo Court on December 7, 2021

/s/ Shana Battles

EXHIBIT 1

EEOC Form 5 (501)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented to: Agency(ies) Charge No(s) <input type="checkbox"/> FEPA 540-2020-03757 <input checked="" type="checkbox"/> EEOC	
_____ and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr. Ms. Mrs.) Ms. Alyssa Nessel		Home Phone (Incl. Area Code) 503-784-9118	
Date of Birth 10/24/1994			
Street Address 101619 East Arrowvale Drive		City, State and ZIP Code Sun Lakes, Arizona 85248	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name JDM Golf, LLC d/b/a Wigwam Golf Resort		No. Employees, Members 15+	
Phone No. (Include Area Code) 623-935-9414			
Street Address PO Box 107019		City, State and ZIP Code Phoenix, AZ 85064	
Name Wigwam Golf Club		No. Employees, Members 15+	
Phone No. (Include Area Code) 623-935-9414			
Street Address 451 North Old Litchfield Road		City, State and ZIP Code Litchfield Park, AZ 85340	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)		DATE(S) DISCRIMINATION TOOK PLACE Earliest: September 16, 2019 Latest: October 16, 2019 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)):			
<p>Alyssa Nessel ("Ms. Nessel") began working as a beverage cart server at the Wigwam Golf Resort's pro shop in May 2019.</p> <p>On September 13, 2019, Ms. Nessel was sexually assaulted on the golf course by a golfer. While filling cups with ice, she was approached by a group of four men who were participating in the Glendale Chamber of Commerce's golf tournament. One of the men approached Ms. Nessel, violently grabbed her buttocks, and attempted to rip off her skirt.</p> <p>Another golfer, an ASU professor, Dr. Karla Murphy, witnessed the incident and told two Wigwam employees. The employees escorted Ms. Nessel to the office of her supervisor, Mr. Leo Simonetta. Wigwam Resort Security entered the office and asked Ms. Nessel for a description of the incident and perpetrator. The security officers asked Ms. Nessel if she would like to press charges. She responded affirmatively, and the police were called. Maricopa County Sheriff's Office arrived and attempted to find the perpetrator on the course but were unsuccessful. Then, the police asked Ms. Nessel to sit at the clubhouse entrance and attempt to identify the perpetrator as foursome groups entered. This continued for hours.</p> <p>Sometime later, Mr. Simonetta asked Ms. Nessel to follow him into the clubhouse restaurant, Red's, where a luncheon was being hosted. Upon entering, she spotted the perpetrator. She pointed him out to Mr. Simonetta, telling him it was a man wearing a blue shirt. Mr. Simonetta pointed to the same individual, and she confirmed that was the perpetrator.</p> <p>At this point, Ms. Nessel was required to go back to the pro shop to do paperwork for the sales she had completed before the incident. The police were still at the resort, and Mr. Simonetta gave her the impression that he would inform the police of the perpetrator's whereabouts. However, Mr. Simonetta did not identify the</p>			

540-2020-03757

perpetrator for them, and the police left without apprehending anyone.

After the incident transpired, neither Ms. Nessel's supervisors nor the Wigwam's HR department reached out to her. The Wigwam Golf Resort's employees did not take immediate or corrective actions. *See Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754, 756 (9th Cir. 1997) ("An employer may be liable for the harassing behavior of its customers and patrons where the employer either ratifies or acquiesces in the harassment by not taking immediate and/or corrective actions."). Indeed, Mr. Simonetta did not even indicate to the police that Ms. Nessel had identified the perpetrator when the perpetrator was still on the resort property.

Shortly after the incident, Ms. Nessel's co-worker began sexually harassing her via text message. Ms. Nessel brought the text messages to HR and complained about the harassment. A few days later, on October 16, 2019, Mr. Simonetta terminated Ms. Nessel's employment, alleging that she had been late to work. Ms. Nessel believes she was late to work twice but recalls that other employees were frequently late and were never terminated or even reprimanded for it. Ms. Nessel believes that she was disciplined and terminated in retaliation for complaining about the sexual assault and harassment that she endured.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

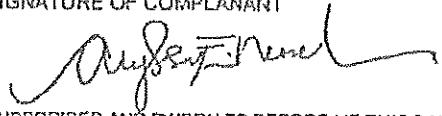
NOTARY -- When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

07/07/2020 
Date Charging Party Signature


SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)
July 07, 2020

LUBIN & ENOCH, P.C.

Nicholas J. Enoch, State Bar No. 016473
Kaitlyn A. Redfield-Ortiz, State Bar No. 030318
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Email: nick@lubinandenoch.com

Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR MARICOPA COUNTY**

Alyssa E. Nessel, a single woman,

Plaintiff,

v.

John and Jane Doe, husband and wife;

Defendants.

No. CV2021-014197

**PLAINTIFF'S MOTION FOR
EXTENSION OF TIME TO SERVE
THE COMPLAINT**

(First Request)

(Assigned to the Honorable Margaret R.
Mahoney)

Pursuant to Ariz. R. Civ. P. ("Rules") 1, 4(i), and 6(b)(1)(A), Plaintiff, Alyssa E. Nessel ("Nessel"), by and through her attorneys at Lubin & Enoch, P.C., submits this Motion for an Extension of Time to Serve the Complaint from Wednesday, December 8, 2021, to Friday, December 30, 2022. This motion is supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 7th day of December 2021.

LUBIN & ENOCH, P.C.

/s/ Nicholas J. Enoch

Nicholas J. Enoch
Attorney for Plaintiff

Memorandum of Points and Authorities

Nessel brought this action against John Doe (“Doe”) and Jane Doe (collectively “Defendants” or the “Does”), on September 9, 2021, for sexual assault and battery. Pursuant to Rule 4(i), Nessel requests the time for her to serve Defendants be extended for a little over one-year, until December 30, 2022. Specifically, Plaintiff desires the extension so that the Equal Employment Opportunity Commission (“EEOC”) may conclude its investigation into Plaintiff’s factually related discrimination charge. *See Exhibit 1.* That investigation is not expected to wrap up anytime soon,¹ but once it is and Plaintiff has been issued a right to sue letter, Plaintiff will amend her complaint to consolidate the parties and claims that are the subject of that investigation with the instant suit.

I. Plaintiff’s EEOC Charge and the Instant Lawsuit are Factually Intertwined.

At the time the sexual assault occurred that gave rise to this action, Nessel was working as a beverage cart server at JDM Golf, LLC d/b/a Wigwam Golf Resort (“the Wigwam”). On September 13, 2019, Nessel was scheduled to work during the Glendale Chamber of Commerce’s 20th Annual Excellence in Education Golf Outing hosted at the Wigwam. During that event, a group of men surrounded her and one of the men (“Doe”) violently grabbed her buttocks and attempted to rip off her skirt (the “incident”). The incident was witnessed by a nearby golfer, who reported it to Wigwam personnel. During the subsequent questioning by her supervisor, Mr. Leo Simonetta (“Simonetta”), Nessel expressed her desire to press charges against her assailant and the Maricopa County Sheriff’s Department was called to the scene.

Nessel attempted in numerous ways to identify Doe, however, she wasn’t successful until Simonetta asked Nessel to accompany him to the clubhouse restaurant, Red’s, where a luncheon was being hosted for the tournament participants and their families. Nessel was

¹ In undersigned counsel’s experience, these investigations may take upward of two years to complete.

1 immediately able to identify Doe, who she pointed out to Simonetta, specifically
2 identifying Doe as wearing a blue shirt. Simonetta pointed to the same individual, and she
3 confirmed that was the assailant.

4 Simonetta then directed Nessel to return to the pro shop to complete some
5 paperwork for sales she had made prior to the incident. The sheriff deputies were still at
6 the resort, and Simonetta gave Nessel the impression that he would inform the deputies of
7 Doe's whereabouts. However, Simonetta did not identify Doe to the sheriff deputies, and
8 they left without apprehending anyone.

9 Shortly after the incident, Nessel's other supervisor began sexually harassing her
10 via text message, which Nessel reported to Human Resources. A few days later, on October
11 16, 2019, Simonetta terminated Nessel's employment. Nessel believes that she was
12 disciplined and terminated in retaliation for complaining about the sexual assault and
13 harassment she endured and to silence her accusations against one of JDM Golf's patrons.

14 On July 7, 2020, Plaintiff submitted a Charge of Discrimination (the "Charge") with
15 the EEOC against her former employer JDM Golf, LLC d/b/a Wigwam Golf Resort
16 alleging, *inter alia*, that her former employer retaliated against her for reporting a sexual
17 assault by a patron while she was on duty. The sexual assault and battery referred to in that
18 Charge is the basis of the instant suit.

19 Doe remains unidentified. However, eight (8) potential assailants can be identified
20 from the tournament participant sheet as golfers who were near Nessel's vicinity at the
21 time of the sexual assault and battery. It is Plaintiff's hope that the EEOC investigation will
22 either uncover the identity of Doe or provide Plaintiff with a right to sue letter, which will
23 result in Doe's identity being uncovered during discovery. At the moment, Nessel has no
24 available procedural means to figure out who Doe is. Further, once a right to sue letter has
25 been issued, Plaintiff intends to combine the instant lawsuit with her suit against her former
26 employer for claims pursuant to the hostile work environment, retaliation, and wrongful
27
28

1 termination provisions of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C.
2 § 2000e, *et seq.*

3 II. Legal Standard for Granting an Extension of Time to Serve

4 Rule 4(i), which is identical to Fed. R. Civ. P. (“Federal Rule”) 4(m),² provides that:

5 If a defendant is not served with process within 90 days after the
6 complaint is filed, the court—on motion, or on its own after notice to
7 the plaintiff—must dismiss the action without prejudice against that
8 defendant *or order that service be made within a specified time*. But if
9 the plaintiff shows good cause for the failure, the court *must* extend the
time for service for an appropriate period.”

10 Ariz. R. Civ. P. 4(i) (emphasis added). Federal Rule 4(m), as construed by the Ninth
11 Circuit,³ “requires a district court to grant an extension of time when the plaintiff shows
12 good cause for the delay[,]” but “permits the district court to grant an extension even in the
13 absence of good cause.” *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007).

14 In March 2020, the Supreme Court of Arizona released its decision in *Sholem v.*
15 *Gass*, 248 Ariz. 281 (2020), which explicitly adopted the above construction when
16 determining the grounds for granting an extension of time to serve under Rule 4(i). There,
17 the Court stated:

18 The plain language of Rule 4(i) permits extensions absent a showing of
19 good cause. The first clause states that if the period for service has
20 expired, a court must either dismiss the complaint ‘or order that service
21 be made within a specified time.’ Thus, by its terms, the first clause

22 ² When Arizona amended Rule 4(i) in 1996, it deliberately adopted language
23 identical to the Federal Rule 4(m). Thus, “great weight should be accorded to ‘federal
24 courts interpreting’ Rule 4(m).” *Sholem*, 248 Ariz. at 286 (quoting *Maier v. Urman*, 211
25 Ariz. 543, 547-48 ¶¶ 9-10 (App. 2005)); see also *Anseriy Ins. Servs. Inc. v. Albrecht*, 192
Ariz. 48, 49 (1998) quoting *Edwards v. Young*, 107 Ariz. 283, 284 (1971) (“Because
Arizona has substantially adopted the Federal Rules of Civil Procedure, we give great
weight to the federal interpretations of the rules.”).

26 ³ The Second, Third, Fifth, Seventh, Tenth, and Eleventh Circuits have similarly
27 held that a district court has discretion to extend the time for service of process absent a
28 showing of good cause. *Chen v. Mayor of Balt.*, 574 U.S. 988 (2014), *writ of certiorari*
dismissed on other grounds, *Chen v. Mayor of Balt.*, 574 U.S. 1068 (2015). Only the Fourth
Circuit has bucked the trend by holding a district court lacks such discretion. *Id.*

1 does not require a plaintiff to show good cause for an extension. In
 2 contrast, the second clause of the rule specifically states, '[b]ut if the
 3 plaintiff shows good cause for the failure, the court must extend the
 4 time for service'. Significantly, by including the word 'but' to introduce
 5 the second clause, the drafters signaled that a showing of good cause is
 6 an exception to and different from ordering an extension under the first
 7 clause.

8 *Sholem*, 248 Ariz. at 286 (quoting Rule 4(i)). Thus, while the first clause provides for a
 9 discretionary extension without a showing of good cause, the second clause provides a
 10 mandatory extension upon such a showing.⁴ *Id.*

11 A. Good cause exists to grant an extension of time to serve the Does because
 12 circumstances outside Plaintiff's control are preventing service within 90
 13 days.

14 If a plaintiff shows good cause for her delay in serving the complaint on a defendant,
 15 "the court must extend the time for service for an appropriate period."⁵ Ariz. R. Civ. P.
 16 4(i). Good cause is proven under Rule 4(i) by showing, "under the specific facts of the
 17 case, [Plaintiff] exercised reasonable diligence in trying to serve the defendant." *Sholem*,
 18 248 Ariz. at 289. A plaintiff shows reasonable diligence by providing "a valid reason or
 19 explanation for failing to serve the defendant within the allotted time period." *See also id.*
 20 quoting *Boley v Kaymark*, 123 F.3d 756, 758 (3rd Cir. 1997) ("In determining whether
 21 good cause exists, the court's primary focus is on the plaintiff's reasons for not complying
 22 with the time limit in the first place.").

23 Valid reasons for delaying service are generally based on circumstances outside the
 24 plaintiff's control. For example, a non-exhaustive list of circumstances outside a plaintiff's

25 ⁴ See *Sholem*, 248 Ariz. at 287 for various additional sources supporting this
 26 construction.

27 ⁵ An appropriate period to extend the time for service depends on the specific facts
 28 of the case. *Sholem*, 248 Ariz. at 289. In *Efew*, 473 F.3d at 1041, the Ninth Circuit held
 seven years to be an extraordinary length of delay. In contrast, the Fifth Circuit in *McGuire*
v. Turnbo, 137 F.3d 321, 323-24 (5th Cir. 1998), found service was timely where plaintiff
 served defendants within the court's extended deadline, nearly two years after the suit was
 filed.

1 control and that constitutes a valid reason includes “sudden illness, catastrophe, or
2 defendant’s evasion of service of process[.]” *Id.* In contrast, missing a deadline because of
3 (1) the plaintiff’s attorney’s busy schedule, *see, e.g., In re Sheehan*, 253 F.3d 507, 512 (9th
4 Cir. 2001), (2) unreasonable procrastination, *see, e.g., Snow v. Steele*, 121 Ariz. 82, 83-84
5 (1978), or (3) “ignorance of the rule, mistake, and inadvertence[.]” *Mann v. Castiel*, 681
6 F.3d 368, 376 (D.C. Cir. 2012), are not valid reasons that support a showing of good cause.
7 *Sholem*, 248 Ariz. at 289.

8
9 Here, Nessel proffers two valid reasons to support her showing of good cause for a
10 mandatory extension of time to serve. First, through Simonetta’s deliberate obstruction, the
11 police were unable to identify or apprehend Doe on the day of the assault. Doe’s identity
12 thus remains unknown at present, but it is likely to be uncovered during the EEOC
13 investigation or during discovery once a right to sue notice is issued. Thus, extending the
14 time to serve until December 30, 2022, will provide the EEOC time to conclude its
15 investigation and Nessel with the opportunity to identify Doe in the ensuing litigation
16 against the Wigwam.

17 Second, upon the issuance of a right to sue letter from the EEOC, Nessel would
18 amend her complaint to include her claims against her former employer pursuant to the
19 hostile work environment, retaliation, and wrongful termination provisions of Title VII.
20 Such inclusion in a single action is favored, as the claims arise out of the same operative
21 facts and this would “prevent[] a multiplicity of actions and allow[] the court to grant
22 complete justice to all parties.” *Staffco, Inc. v. Maricopa Trading Co.*, 122 Ariz. 353, 357
23 (1979) (“[W]henever possible, all claims should be disposed of in one action.”).

24 Thus, for good cause shown, Nessel respectfully requests the Court extend her time
25 to serve defendants until December 30, 2022.
26
27
28

1 B. Assuming *arguendo* that good cause is not found, it is still within this
 2 Court's discretion to grant an extension of time to serve because there is
 3 "some cause" that weighs in favor of such an extension.

4 Courts have broad discretion to extend time for service under Rule 4(i). *See Efaw*,
 5 473 F.3d at 1041. The 90-day period for service under Rule 4(i) "operates not as an outer
 6 limit subject to reduction, but as an irreducible allowance." *Henderson v. United States*,
 7 517 U.S. 654, 661 (1996) (referring to Federal Rule 4(m)); *see also Mann v. Am. Airlines*,
 8 324 F.3d 1088, 1090-91 (9th Cir. 2003) ("On its face [Federal] Rule 4(m) does not tie the
 9 hands of the district court after the [90]-day⁶ period has expired. Rather, [Federal] Rule
 10 4(m) explicitly permits a district court to grant an extension of time to serve the complaint
 11 after that [90]-day period.").

12 This discretion, however, is "not limitless." *Sholem*, 248 Ariz. 282 (citing *Efaw*, 473
 13 F.3d at 1041). Plaintiffs "must still show some cause" as to why an extension should be
 14 granted. *Id.* Additionally, "a court's discretionary findings must be based on facts contained
 15 in the record." *Id.* (internal citations omitted).

16 Courts consider several factors when determining whether to grant a discretionary
 17 extension. *Id.* These factors include "whether: (1) the applicable statute of limitations bars
 18 the plaintiff from re-filing the action; (2) the defendant evaded service; and (3) the
 19 defendant would be prejudiced if the court grants the extension." *Id.*; *see also Efaw*, 473
 20 F.3d at 1041 (stating that courts consider the statute of limitations and prejudice to
 21 defendant as discretionary factors when determining whether to grant an extension under
 22 Federal Rule 4(m)); *United States v. McLaughlin*, 470 F.3d 698, 701 (7th Cir. 2006)
 23 (same); *Horenkamp v. Van Winkle and Co., Inc.*, 402 F.3d 1129, 1132 (11th Cir. 2005)
 24 (considering the factors of prejudice, evasion of service, and the statute of limitations).

25
 26
 27 ⁶ *Mann* was decided before the 2015 amendment to Rule 4(m) which reduced the
 28 time for service from 120-days to 90-days. *See Fed. R. Civ. P. 4(m)* (2015); *see also*
Sholem, 248 Ariz. at 286. Arizona amended Rule 4(i) in 2017 to conform with the change.
See Ariz. R. Civ. P. 4(i) (2017); *see also Sholem*, 248 Ariz. at 286.

1. Plaintiff would arguably be barred from re-filing her suit if her request for an extension of time to serve defendants is denied.

Under the first factor, a court may consider whether the plaintiff would be barred from re-filing her complaint due to the applicable statute of limitations if her suit was dismissed for lack of service:

[A] court's discretion is not diminished when the statute of limitations would bar re-filing of the suit if the [] court decided to dismiss the case instead of grant an extension. To the contrary, the advisory committee notes explicitly contemplate that a [] court might use its discretion to grant an extension in that very situation: 'Relief may be justified, for example, if the applicable statute of limitations would bar the re-filed action.'

Mann, 324 F.3d at 1090-91 (quoting Fed. R. Civ. P. 4, Advisory Committee Note to 1993 Amendments, Subdivision (m)); accord *De Tie v. Orange Cty.*, 152 F.3d 1109, 1111 n.5 (9th Cir. 1998). This is in harmony with the courts preference to decide cases on the merits rather than dismissing on procedural grounds. See *Clemens v. Clark*, 101 Ariz. 413, 414 (1966); *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984).

Here, Nessel’s common law tort claims for assault and battery are subject to a two-year statute of limitations. A.R.S. § 12-542; *see also Skousen v. Nidy*, 90 Ariz. 215, 218 (1961) (applying the two-year statute of limitations to an action for assault and battery). The limitations period ended on September 13, 2021. Thus, Nessel might be barred from re-filing her complaint if her suit was dismissed for a failure to serve. This factor weighs heavily in favor of granting Nessel’s request for an extension of time to serve.

2. There is no indication in the record that Defendant will be prejudiced by the delay.

In *Sholem* the Court found “no evidence showing that due to [Plaintiff’s] delay, witnesses [were] unavailable or that evidence [was] lost.” 248 Ariz. at 283, citing *Boley*, 123 F.3d at 759 (“[A] finding of prejudice is limited to circumstances in which delay impaired a defendant’s ability to defend.”). Merely losing “the procedural advantage of

1 having [a] case dismissed on the grounds of abatement . . . does not qualify as a showing
2 of prejudice.” *Id.*

3 Here, there are no facts in the record that indicate the defendant would be prejudiced
4 by delaying service for the requested period. The witnesses’ abilities to recall the assault
5 and battery will not be significantly diminished, and any video or other electronic evidence,
6 to the extent that it even exists, will not be impaired by the requested delay. The procedural
7 advantage to the Defendants for dismissing the suit for a failure to serve is not a valid
8 showing of prejudice and regardless, courts prefer to decide cases on their merits as
9 opposed to dismissing them solely on procedural grounds. *See Clemens*, 101 Ariz. at 414;
10 *Adams*, 139 Ariz. at 342.

11
12 **III. Conclusion**

13 Nessel requests that the time to serve the defendants be extended: (1) because there
14 is good cause to extend the deadline to allow the EEOC to conclude its investigation into
15 Plaintiff’s factually related discrimination charge and for Nessel to amend her complaint
16 to consolidate the EEOC charges with her instant lawsuit, and (2) in the alternative, a
17 discretionary extension is appropriate because the applicable statute of limitations bars
18 Nessel from re-filing this action and the Defendant is not prejudiced if the Court grants this
19 Motion.

20 Thus, Plaintiff respectfully requests that the deadline for Plaintiff to serve the
21 Defendants be extended to December 30, 2022.

22 RESPECTFULLY SUBMITTED this 7th day of December 2021.

23
24 LUBIN & ENOCH, P.C.

25 /s/ Nicholas J. Enoch
26 Nicholas J. Enoch
27 Attorney for Plaintiff
28

CERTIFICATE OF SERVICE

The foregoing was filed via Turbo Court on December 7, 2021

/s/ Shana Battles

Office Distribution

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

****FILED****

11/17/2021

by Superior Court Admin
on behalf of Clerk of the
Superior Court

11/13/2021

COURT ADMINISTRATION

Ct. Admin
Deputy

Case Number: CV2021-014197

Alyssa E Nessel

V.

John Doe

The Judge assigned to this action is the Honorable Margaret Mahoney

NOTICE OF INTENT TO DISMISS FOR LACK OF SERVICE

You are hereby notified that the complaint filed on 09/09/2021 is subject to dismissal pursuant to Rule 4 (i) of the Arizona Rules of Civil Procedure. The deadline for completing service is 12/08/2021. If the time for completing service has not been extended by the court and no defendants have been served by this date, the case will be dismissed without prejudice.

All documents required to be filed with the court should be electronically filed through Arizona Turbo Court at www.azturbocourt.gov.

Superior Court of Maricopa County - integrated Court Information System

Endorsee Party Listing

Case Number: CV2021-014197

Party Name	Attorney Name
Alyssa E Nessel	Nicholas J Enoch

Bar ID: 016473

Person/Attorney Filing: Nicholas J Enoch
 Mailing Address: Lubin & Enoch P.c. 349 North Fourth Avenue
 City, State, Zip Code: Phoenix, AZ 85003
 Phone Number: (602)234-0008
 E-Mail Address: nick@lubinandenoch.com
 [] Representing Self, Without an Attorney
 (If Attorney) State Bar Number: 016473, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

Alyssa E Nessel
 Plaintiff(s),
 v.
 John Doe, et al.
 Defendant(s).

Case No. CV2021-014197

SUMMONS

To: Jane Doe

WARNING: THIS AN OFFICIAL DOCUMENT FROM THE COURT THAT AFFECTS YOUR RIGHTS. READ THIS SUMMONS CAREFULLY. IF YOU DO NOT UNDERSTAND IT, CONTACT AN ATTORNEY FOR LEGAL ADVICE.

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers were served on you with this Summons.
2. If you do not want a judgment taken against you without your input, you must file an Answer in writing with the Court, and you must pay the required filing fee. To file your Answer, take or send the papers to Clerk of the Superior Court, 201 W. Jefferson, Phoenix, Arizona 85003 or electronically file your Answer through one of Arizona's approved electronic filing systems at <http://www.azcourts.gov/efilinginformation>.
 Mail a copy of the Answer to the other party, the Plaintiff, at the address listed on the top of this Summons.
 Note: If you do not file electronically you will not have electronic access to the documents in this case.
3. If this Summons and the other court papers were served on you within the State of Arizona, your Answer must be filed within TWENTY (20) CALENDAR DAYS from the date of service, not counting the day of service. If this Summons and the other court papers were served on you outside the State of Arizona, your Answer must be filed within THIRTY (30) CALENDAR DAYS from the date of service, not counting the day of service.

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

GIVEN under my hand and the Seal of the Superior Court of the State of Arizona in and for the County of MARICOPA

SIGNED AND SEALED this Date: *September 09, 2021*

JEFF FINE
Clerk of Superior Court

By: *CECILIA CUELLAR*
Deputy Clerk



Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

If you would like legal advice from a lawyer, contact Lawyer Referral Service at 602-257-4434 or <https://maricopabar.org>. Sponsored by the Maricopa County Bar Association.

Person/Attorney Filing: Nicholas J Enoch
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 City, State, Zip Code: Phoenix, AZ 85003
 Phone Number: (602)234-0008
 E-Mail Address: nick@lubinandenoch.com
☐ Representing Self, Without an Attorney
 (If Attorney) State Bar Number: 016473, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

Alyssa E Nessel
 Plaintiff(s),
 v.
 John Doe, et al.
 Defendant(s).

Case No. CV2021-014197

SUMMONS

To: John Doe

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SIGNED AND SEALED this Date: *September 09, 2021*

JEFF FINE
Clerk of Superior Court

By: *CECILIA CUELLAR*
Deputy Clerk



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If you would like legal advice from a lawyer, contact Lawyer Referral Service at 602-257-4434 or <https://maricopabar.org>. Sponsored by the Maricopa County Bar Association.

Clerk of the Superior Court
*** Electronically Filed ***
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(If Attorney) State Bar Number: 016473, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Alyssa E Nessel
Plaintiff(s),
v.
John Doe, et al.
Defendant(s).

Case No. CV2021-014197

**CERTIFICATE OF
COMPULSORY ARBITRATION**

I certify that I am aware of the dollar limits and any other limitations set forth by the Local Rules of Practice for the Maricopa County Superior Court, and I further certify that this case IS NOT subject to compulsory arbitration, as provided by Rules 72 through 77 of the Arizona Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this

By: Nicholas J Enoch /s/
Plaintiff/Attorney for Plaintiff

Clerk of the Superior Court
*** Electronically Filed ***
C. Cuellar, Deputy
9/9/2021 2:15:17 PM
Filing ID 13354974

**In the Superior Court of the State of Arizona
In and For the County of Maricopa**

Plaintiff's Attorneys:

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CV2021-014197

Kaitlyn Redfield-Ortiz
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Plaintiff:

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Telephone Number: (602)234-0008
Email address: nick@lubinandenoch.com

Defendants:

John Doe

Jane Doe

Discovery Tier t1

Case Category: Tort Non-Motor Vehicle
Case Subcategory: Intentional Tort

LUBIN & ENOCH, P.C.
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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

Alyssa E. Nessel, a single woman,

Plaintiff,

v.

John and Jane Doe, husband and wife;

Defendants.

No. CV2021-014197

COMPLAINT

Jury Trial Demanded

Tier 1 Discovery

Plaintiff, Alyssa E. Nessel ("Nessel"), by and through her attorneys at Lubin & Enoch, P.C., brings this action against John and Jane Doe, husband and wife (the "Does"), for sexual assault and battery.

INTRODUCTION

1. This case concerns the sexual assault and battery against Nessel by a patron of JDM Golf, LLC ("JDM Golf") doing business as the Wigwam Resort and Golf (the "Wigwam")'s while she was employed at the Wigwam.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this case pursuant to Ariz. Const. art. VI, § 14 and A.R.S § 12-123.

3. This Court has personal jurisdiction over the Does because the events that give rise to the causes of action occurred within Maricopa County as a result of the Does conduct within the county, and they reside therein.

4. Venue is proper in this Court pursuant to A.R.S. § 12-401.

5. This case will likely involve discovery into the misconduct of the Does, including video and surveillance footage and testimony from witnesses. Tier 1 discovery is appropriate for intentional torts pursuant to Arizona Rule of Civil Procedure 26.2(b)(1).

PARTIES

6. Nessel is currently a resident of Sun Lakes, Arizona in Maricopa County. At all times relevant to this complaint, Nessel resided in Maricopa County.

7. At the time the events that give rise to the causes of this action occurred, Nessel was an employee of JDM Golf. She was employed as a beverage cart server at the Wigwam, which is a 440-acre, full-service resort that offers three 18-hole golf courses.

8. Upon information and belief, the Does are now, and at all times relevant hereto have been, husband and wife, constituting a marital community under the laws of the state of Arizona. The Does are fictitiously named defendants pursuant to Arizona Rule of Civil Procedure 10(d). Once their true names are discovered, this complaint shall be amended accordingly.

1 9. The acts and omissions undertaken by the Does were performed as agents
2 and for the benefit of the marital community.

3 **GENERAL ALLEGATIONS**
4

5 10. On September 13, 2019, the Glendale Chamber of Commerce hosted the
6 20th Annual Excellence in Education Golf Outing. This golf tournament was held at the
7 Wigwam located at 300 East Wigwam Boulevard, Litchfield Park, Arizona 85340. *See*
8 <https://www.glendaleazchamber.org/old-events-calendar.html>.
9

10 11. Nessel, who was employed by JDM Golf until October 16, 2019, was
11 scheduled to work during the event.

12 12. That morning, Nessel was approached by a group of golfers while serving
13 beverages at a hydration station set up for the event. The group surrounded her and one of
14 the men (“Doe” or the “perpetrator”) violently grabbed her buttocks and attempted to rip
15 off her skirt (the “incident”).
16

17 13. Several nearby golfers witnessed the incident. Dr. Karla Murphy (“Dr.
18 Murphy”), a professor at Arizona State University and one of the witnesses, brought the
19 incident to the attention of two Wigwam employees. When she noticed how shaken
20 Nessel was from the incident, she insisted Nessel be escorted off the course.
21

22 14. Wigwam ambassadors led Nessel to the office of her supervisor, Mr. Leo
23 Simonetta (“Simonetta”), where they were joined by Wigwam security personnel. There,
24 she was asked for a description of the incident and perpetrator, which she provided, and
25 Simonetta recorded the incident in her human resources (“HR”) file.
26

27 15. During the questioning, Nessel was asked if she would like to press
28

1 charges. She indicated she would and requested the police be called.

2 16. The Maricopa County Sherriff's Office (the "sheriff deputies" or
3 "deputies") responded to the call. After the sheriff deputies arrived on scene, Wigwam
4 security personnel escorted the deputies onto the course so that the perpetrator could be
5 identified and detained.
6

7 17. The two-foursome groups playing near her location at the time of the
8 incident were the focus of the search. Those groups were identified from the tournament
9 participant sheet and the schedule of each foursome on the course. Doe and any witnesses
10 were most likely to be part of those two foursomes. Those two foursomes are circled on
11 the tournament participant sheet (*See Exhibit A*).
12
13

14 18. Despite this focused search, the sheriff deputies and Wigwam security
15 personnel were unsuccessful at locating the perpetrator. Upon their return, the deputies
16 asked Nessel to sit at the clubhouse entrance and attempt to identify the perpetrator as
17 foursome groups returned from the course. This continued for hours but was similarly
18 unsuccessful.
19

20 19. Sometime later, Simonetta asked Nessel to follow him into the clubhouse
21 restaurant, Red's, where a luncheon was being hosted for the tournament participants and
22 their families. Upon entering, Nessel immediately spotted the perpetrator. She pointed
23 him out to Simonetta, specifically identifying the man as wearing a blue shirt. Simonetta
24 pointed to the same individual, and Nessel confirmed that was the perpetrator.
25
26

27 20. Simonetta directed Nessel to return to the pro shop to do paperwork for the
28 sales she had completed before the incident. Nessel was relieved the situation was under

1 control and complied with the direction.

2 21. The sheriff deputies were still at the resort. However, despite Simonetta
3 giving Nessel the impression he would inform the deputies of the perpetrator's
4 whereabouts, he did not identify the perpetrator to them, and the deputies left without
5 apprehending anyone. Indeed, Simonetta did not even indicate to the deputies that Nessel
6 had identified the perpetrator when the perpetrator was still on the resort property.
7

8 22. The perpetrator remains unidentified; however, potential perpetrators, as
9 identified on the tournament participant sheet, include Ron Castro, Scott Spillman, Matt
10 Farmer, Mike Walters, Justin Oquist, Brian Schmidt, John Pruitt, and Corey Pankin.
11 Upon information and belief, one of these men is John Doe.
12

13 23. Following the incident, Nessel requested the contact information of
14 Wigwam's internal security personnel because she no longer felt safe working at the
15 Wigwam.
16

17 24. In February 2020, still experiencing the stress and trauma of the experience,
18 Nessel reached out to Dr. Murphy and asked her if she were able to provide or knew of
19 any resources that could help her recover from the trauma the incident caused her. Dr.
20 Murphy was able to provide Nessel a list of resources.
21

22 **CAUSES OF ACTION**

23 **Count I: Common Law Tort of Assault**

24 25. Nessel realleges and incorporates by reference the foregoing paragraphs as
25 if fully set forth herein.
26
27
28

1 26. Under Arizona law, a person commits the tort of assault if that person
 2 “intended to cause harm or offensive contact¹ with [another that results in the other
 3 person feeling] apprehension of an immediate harmful or offensive contact.” Revised
 4 Arizona Jury Instructions (Civil 7th ed.) Intentional Torts 1 (Assault); *see* Restatement
 5 (Second) of Torts § 21 (1965); *Garcia v. U.S.*, 826 F.2d 806, n. 9 (9th Cir. 1987).

7 27. As a result of the above-mentioned conduct, Nessel experienced fear and
 8 apprehension and harm to her self-image and personal dignity. She now seeks to recover
 9 compensatory and punitive damages.²

11 **Count II: Common Law Tort of Battery**

12 28. Nessel realleges and incorporates by reference the foregoing paragraphs as
 13 if fully set forth herein.

15 29. Under Arizona common law, “a battery is a harmful or offensive contact
 16 with a person, resulting from an act intended to cause the plaintiff . . . to suffer such a
 17 contact.” *Meadows v. Guptill*, 856 F.Supp. 1362, 1371 (D.Ariz. 1993) (finding offensive
 18 touching giving rise to a claim for battery where Defendant patted Plaintiff’s buttocks
 19 and grabbed or tugged on Plaintiff’s blouse); *see* Revised Arizona Jury Instructions (Civil
 20 7th ed.) Intentional Torts 2 (Battery); Restatement (Second) of Torts § 18 (1965); *Garcia*,
 21 826 F.2d at n. 9.

25 ¹ “A contact is offensive if it would offend a reasonable person.” Revised Arizona
 26 Jury Instructions (Civil 7th ed.) Intentional Torts 1 (Assault).

27 ² Nessel does not need to prove the extent of her damages as damages are presumed
 28 in intentional torts, such as assault and battery, where the tort itself seeks to penalize
 intentional conduct. Revised Arizona Jury Instructions (Civil 7th ed.) Intentional Torts 1
 (Assault), n. 3, & Intentional Torts 2 (Battery), n. 3.

30. As a result of the above-mentioned conduct, Nessel experienced mental³ and emotional⁴ distress and suffered harm to her personal dignity and self-image. She now seeks to recover compensatory and punitive damages.⁵

Count III: Negligent Infliction of Emotional Distress

31. Nessel realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

32. Under Arizona common law, a claim for negligent infliction of emotional distress exists “[i]f the actor unintentionally causes emotional distress to another . . . [and] the actor (a) should have realized that his conduct involved an unreasonable risk of causing the distress . . . and (b) from facts known to him should have realized that the distress, if it were caused, might result in illness or bodily harm. . . .” *Quinn v. Turner*,

³ Arizona permits recovery for mental distress resulting from “a physical invasion of a person or the person’s security.” *Valley Nat’l Bank v. Brown*, 110 Ariz. 260, 265, 517 P.2d 1256, 1261 (1974).

⁴ Like in most dignitary tort cases where the facts are such that an ordinary person would feel distress, Nessel may recover even where the damage inflicted is difficult or even impossible to quantify. *See Johnson v. Pankratz*, 196 Ariz. 621, 623, 2 P.3d 1266, 1268 (Ct.App. 2000) (citing Restatement (Second) of Torts § 13 (1965); Dan D. Dobbs, *Dobbs Law of Remedies*, § 7.1(2) (2d. ed. 1993). Specifically, battery claims traditionally permit recovery of general or presumed damages “of a substantial amount . . . merely by showing that the tort was committed at all.” Dobbs, § 7.1(2). This includes proving the extent of her mental and emotional distress damages. *Id.*

⁵ Punitive damages are recoverable under Arizona law upon a showing by clear and convincing evidence that the defendant’s conduct was aggravated and outrageous, and that the defendant acted with an evil mind. *Meadows*, 856 F.Supp. at 1372 (citing *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 331-332, 723 P.2d 675, 680-81 (1986). An evil mind is shown where the defendant intended to cause injury or chose a course of conduct that knowingly created a substantial risk of harm to others. *Ranburger v. Southern Pacific Transp. Co.*, 157 Ariz. 551, 553, 760 P.2d 551, 553 (1988).

1 155 Ariz. 225, 228 (Ct. App. 1987) (quoting Restatement (Second) of Torts § 313(1)
2 (1965) (internal quotations omitted)).

3 33. Doe should have known that violently grabbing Nessel's buttocks and
4 attempting to rip off her skirt would create an unreasonable risk of causing Nessel
5 distress and that such distress would result in illness or bodily harm.
6

7 34. As a result of the above-mentioned conduct, Nessel experienced mental and
8 emotional distress that manifested physically and suffered harm to her personal dignity
9 and self-image.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Nessel prays that she can recover from the Does the following:
13

14 A. Award Nessel compensatory and punitive damages in an amount appropriate
15 to the proof adduced at trial;

16 B. Award Nessel litigation costs pursuant to A.R.S. § 12-341; and
17

18 C. Such other legal and equitable relief as the Court deems just.

19 DATED this 9th day of September 2021.

20 LUBIN & ENOCH, P.C.

21
22 /s/ Nicholas J. Enoch

23 Nicholas J. Enoch

24 Attorney for Plaintiff
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September 2021, I electronically transmitted the attached Complaint using the AZ-Turbo Court E-filing Online System.

/s/ Shana Battles

EXHIBIT A

Glendale Chamber of Commerce

Gold Course Pairings

Hole #	Player	Hole #	Player	Hole #	Player
18A	Shapiro, Harry	12A	Martinez, Ramon	6A	McDermott, Patrick
18A	Scalia, Tony	12A	Martin, Mark	6A	Sites, Ron
18A	Tanner, Lauri	12A	Holecheck, Joshua	6A	Mazza, John
18A	Froelich, Kelly	12A	Hoang, Jimmy	6A	Holdaway, Melissa
18B	Pitts, Josh	12B	Castro, Ron	6B	Covena, Washington
18B	Gonzalez, Steve	12B	Spillman, Scott	6B	Coyle, Chris
18B	Voss, Scott	12B	Farmer, Matt	6B	Martin, Rachele
18B	Byfield, Justin	12B	Walters, Mike	6B	Olivas, Rosa
17A	Mocariski, John	11A	Stewart, Nathan	5A	Smith, Stephen
17A	Standage, Jeff	11A	Francis, Michael	5A	Leonardi, Kyle
17A	Deschler, Derek	11A	Horie, Craig	5A	Cuttone, Joe
17A	Huggins, Randy	11A	Algeria, Charles	5A	Ruiz, Ryan
17B	Weis, Jason	11B	Oquist, Justin	5B	Jacobo, Joseph
17B	Merryman, Christine	11B	Schmidt, Brian	5B	Martin, Billy
17B	Munter, Anne	11B	Pruitt, John	5B	Jacobo, Manny
17B	Aker, Patricia	11B	Pankin, Corey	5B	Byron, Daniel
16A	Bannon, Peter	10A	Dellosa, Gary	4A	Spicola, Tony
16A	Mace, Alan	10A	Samuel, David	4A	Easton, Dave
16A	Mulvey, Kevin	10A	Thieken, Michelle	4A	Setacase, Joe
16A	Willbrand, Kevin	10A	Guerro, Victor	4A	Klimciew, Mike
16B	Valenzuela, Natalie	10B	Roberts, Dan -- helped	4B	Carter, Scott
16B	Jauregui, George	10B	Edgar, Gary	4B	Pump, Steve
16B	Munakash, Nimer	10B	Moore, Robert	4B	Cox, Dan
16B	Winkel, Robert	10B	Flitton, Joseph	4B	TBD,
15A	Hernandez, Manual	9A	Ramsey, Dr. Ramsey Eric	3A	Parkin, Mike
15A	Miranda, Mellors	9A	Rocha, Bethany	3A	Del Rosal, Cesar
15A	Trombley, Joseph	9A	Bennett, Justin	3A	Keel, Chris
15A	Carey, Joey	9A	Murphy, Dr. Karla	3A	Tobin, Ben
15B	Kiefer, Greg	9B	Ernst, Ray	3B	Cipriano, Jerry
15B	Whalen, Joseph	9B	Luedeker, Todd	3B	Slms, Korey
15B	Guston, Ramon	9B	Sliver, Jerry	3B	Reed, Adam
15B	Jacobson, Ryan	9B	Schmidlen, Andy	3B	Alejandro, Anthony
14A	Rodriguez, Luis	8A	Pena, Javier	2A	Flemm, David
14A	Brooks, Brooklyn	8A	Hancock, Jeff	2A	Wren, Ryan
14A	Pruitt, Gene	8A	Thomas, Justin	2A	Theele, Jay
14A	Gonzalez, Anthony	8A	Garrison, Kale	2A	Martin, Jason
14B	Brash, Zach	8B	Habaluyas, Kevin	2B	Ortega, David
14B	LoDuca, Anthony	8B	Polster, Travis	2B	Ortega, Dave
14B	Pritchard, Will	8B	Truong, Hieu	2B	Guerrero, Gabe
14B	Zangl, Wyatt	8B	Mehta, Janet	2B	Lopez, Eddle
13A	Penberthy, Jim	7A	Fulford, Briar	1A	Fillon, Andy
13A	Martinez, Scott	7A	Corona, Virginia	1A	Hulse, Russell
13A	Conaway, Sean	7A	Costa, Pua	1A	LaGanke, Bob
13A	Boykin, Ryan	7A	TBD,	1A	TBD,
13B	Smith, Matt	7B	Dana, William	1B	Crow, John
13B	Othon, Art	7B	Calhoun, Anthony	1B	Phelps, Kevin
13B	Delgado, Ray	7B	Engel, Shannon	1B	Caracciolo, Ryan
13B	Gamez, Adolfo	7B	Brown, Brandon	1B	TBD,

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Attorneys for Defendant JDM Golf, LLC

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

Alyssa E. Nessel, a single woman,

Plaintiff,

vs.

JDM Golf, LLC, an Arizona limited
liability company; John and Jane Doe,
husband and wife,

Defendants.

Case No. CV2021-014197

**ANSWER TO FIRST AMENDED
COMPLAINT**

For its Answer to the First Amended Complaint of Plaintiff Alyssa E. Nessel (“Plaintiff”), Defendant JDM Golf, LLC (“Defendant”) admits, denies and affirmatively alleges as follows:

INTRODUCTION

1. Defendant denies the allegations contained in Paragraph 1, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

2. Defendant denies the allegations contained in Paragraph 2, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

JURISDICTION & VENUE

3. Defendant admits that this Court has jurisdiction over this case, but denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the

1 relief she seeks.

2 4. Defendant admits that this Court has personal jurisdiction over it, admits that
3 Defendant is an Arizona-domiciled limited liability company, admits that it is licensed to
4 and does business in Arizona, admits that Plaintiff has alleged that the events giving rise
5 to this action occurred in Maricopa County, but denies the remaining allegations contained
6 in Paragraph 4, denies that it engaged in any unlawful conduct, and denies that Plaintiff is
7 entitled to any of the relief she seeks.

8 5. Defendant lacks knowledge or information sufficient to form a belief as to
9 the truth of the allegations contained in Paragraph 5, and therefore denies them.

10 6. Defendant admits the allegations contained in Paragraph 6.

11 **PARTIES**

12 7. Defendant lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations contained in Paragraph 7, and therefore denies them.

14 8. Defendant admits the allegations contained in Paragraph 8.

15 9. Defendant admits the allegations contained in Paragraph 9.

16 10. Defendant admits the allegations contained in Paragraph 10.

17 11. Defendant admits the allegations contained in Paragraph 11.

18 12. Defendant admits the allegations contained in Paragraph 12.

19 13. Defendant lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in Paragraph 13, and therefore denies them.

21 14. Defendant lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations contained in Paragraph 14, and therefore denies them.

23 **GENERAL ALLEGATIONS**

24 15. Defendant admits that, on September 13, 2019, the Glendale Chamber of
25 Commerce hosted its 20th Annual Excellence in Education Golf outing, admits the golf
26 outing was held at the at the Wigwam, but denies the remaining allegations contained in
27 Paragraph 15.

28 16. Defendant admits the allegations contained in Paragraph 16.

17. Defendant denies the allegations contained in Paragraph 17.

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18, and therefore denies them.

19. Defendant admits the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant admits that the Maricopa County Sheriff's Office responded to the call that the Wigwam placed to initiate an investigation, admits that Wigwam security personnel escorted the deputies onto the course, but denies the remaining allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant admits that the Maricopa County Sherriff and Wigwam security were not successful in locating an alleged perpetrator, but denies the remaining allegations contained in Paragraph 23.

24. Defendant admits that Plaintiff went to a luncheon with Mr. Simonetta that was hosted for the tournament participants, but denies the remaining allegations contained in Paragraph 24.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25, and therefore denies them.

26. Defendant admits that the Maricopa County Sherriff left Wigwam without apprehending anyone, but denies the remaining allegations contained in Paragraph 26.

27. Defendant denies the allegations contained in Paragraph 27.

28. Defendant admits the alleged perpetrator is unidentified, and denies that the individuals identified by Plaintiff in Paragraph 28 are potential perpetrators on lack of information and belief.

29. Defendant denies the allegations contained in Paragraph 29.

30. Defendant denies the allegations contained in Paragraph 30.

31. Defendant admits that it terminated Plaintiff's employment, but denies the remaining allegations contained in Paragraph 31, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

32. Defendant states that the first sentence in Paragraph 32 is a legal contention to which no response is required, but to the extent a further response is required, denies. Defendant denies the remaining allegations contained in Paragraph 32, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

33. Defendant denies the allegations contained in Paragraph 33.

34. Defendant denies the allegations contained in Paragraph 34.

CONDITIONS PRECEDENT

35. Defendant admits the allegations contained in Paragraph 35.

36. Defendant states that the allegation contained in Paragraph 36 is a legal contention to which no response is required. To the extent a further responses is required, Defendant denies.

CAUSES OF ACTION

Count I: Violation of Title VII of the Civil Rights of 1964

37. Defendant reaffirms its Answers to Paragraph 1-36.

A. Coverage Under Title VII

38. Defendant states that the allegations contained in Paragraph 38 are legal contentions to which no response is required. To the extent a further responses is required, Defendant denies.

39. Defendant states that the allegations contained in Paragraph 39 are legal contentions to which no response is required. To the extent a further responses is required, Defendant denies.

40. Defendant admits that it was Plaintiff's former employer, but denies the remaining allegations contained in Paragraph 40.

41. Defendant denies the allegations contained in Paragraph 41.

1 42. Answering Paragraph 42, Defendant admits only that Plaintiff verbally
2 reported an incident that Defendant investigated and called the Maricopa County Sheriff's
3 Office, but denies the remaining allegations contained in Paragraph 42.

4 43. Defendant denies the allegations contained in Paragraph 43.

5 44. Defendant denies the allegations contained in Paragraph 44, denies that it
6 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
7 she seeks.

8 45. Defendant denies the allegations contained in Paragraph 45.

9 46. Defendant denies the allegations contained in Paragraph 46.

10 47. Defendant denies the allegations contained in Paragraph 47.

11 48. Defendant denies the allegations contained in Paragraph 48 and
12 subparagraphs (1) – (2), denies that it engaged in any unlawful conduct, and denies that
13 Plaintiff is entitled to any of the relief she seeks.

14 **B. Sexual Discrimination**

15 49. Defendant states that the allegations contained in Paragraph 49 are legal
16 contentions to which no response is required. To the extent a further responses is required,
17 Defendant denies.

18 50. Defendant denies the allegations contained in Paragraph 50, denies that it
19 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
20 she seeks.

21 51. Defendant denies the allegations contained in Paragraph 51, denies that it
22 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
23 she seeks.

24 **C. Retaliation**

25 52. Defendant states that the allegations contained in Paragraph 52 are legal
26 contentions to which no response is required. To the extent a further response is required,
27 Defendant denies.

1 53. Defendant denies the allegations contained in Paragraph 53, denies that it
2 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
3 she seeks.

4 54. Defendant denies the allegations contained in Paragraph 54, denies that it
5 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
6 she seeks.

7 55. Defendant denies the allegations contained in Paragraph 55, denies that it
8 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
9 she seeks.

10 **Count II: Violation of the Arizona Civil Rights Act**

11 56. Defendant reaffirms its Answers to Paragraphs 1 - 55.

12 **A. Coverage Under ACRA**

13 57. Defendant states that the allegations contained in Paragraph 57 are legal
14 contentions to which no response is required. To the extent a further response is required,
15 Defendant denies.

16 58. Defendant states that the allegations contained in Paragraph 58 are legal
17 contentions to which no response is required. To the extent a further response is required,
18 Defendant denies.

19 59. Defendant admits that it was Plaintiff's former employer, but denies the
20 remaining allegations contained in Paragraph 59.

21 60. Defendant denies the allegations contained in Paragraph 60.

22 61. Answering Paragraph 61, Defendant admits only that Plaintiff verbally
23 reported an incident that Defendant investigated and called the Maricopa County Sheriff's
24 Office, but denies the remaining allegations contained in Paragraph 61.

25 62. Defendant denies the allegations contained in Paragraph 62.

26 63. Defendant denies the allegations contained in Paragraph 63, denies that it
27 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
28 she seeks.

64. Defendant denies the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant denies the allegations contained in Paragraph 66, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

67. Defendant denies the allegations contained in Paragraph 67 and subparagraphs (a) – (b), denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

B. Sexual Discrimination

68. Defendant states the allegations contained in Paragraph 68 are legal contentions to which no response is required. To the extent a further response is required, Defendant denies.

69. Defendant denies the allegations contained in Paragraph 69, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

C. Retaliation

70. Defendant states the allegations contained in Paragraph 70 are legal contentions to which no response is required. To the extent a further response is required, Defendant denies.

71. Defendant denies the allegations contained in Paragraph 71, denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief she seeks.

Count III: Common Law Tort of Assault (Against the Does Only)

72. Defendant reaffirms its Answers to Paragraphs 1-71.

73. Defendant states the allegations contained in Paragraph 73 are legal contentions to which no response is required. To the extent a further response is required, Defendant denies.

1 74. Defendant denies the allegations contained in Paragraph 74, denies that it
2 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
3 she seeks.

4 **Count IV: Common Law Tort of Battery**
5 **(Against the Does Only)**

6 75. Defendant reaffirms its Answers to Paragraphs 1–74.

7 76. Defendant states the allegations contained in Paragraph 76 are legal
8 contentions to which no response is required. To the extent a further response is required,
9 Defendant denies.

10 77. Defendant denies the allegations contained in Paragraph 77, denies that it
11 engaged in any unlawful conduct, and denies that Plaintiff is entitled to any of the relief
12 she seeks.

13 78. Defendant acknowledges that Plaintiff is seeking compensatory and punitive
14 damages in this matter, but denies that Plaintiff is entitled to any of the relief she seeks,
15 and denies that it engaged in any unlawful conduct.

16 **Count V: Negligent Infliction of Emotional Distress**
17 **(Against the Does Only)**

18 79. Defendant reaffirms its Answers to Paragraphs 1-78.

19 80. Defendant states the allegations contained in Paragraph 80 are legal
20 contentions to which no response is required. To the extent a further response is required,
21 Defendant denies.

22 81. Defendant lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations contained in Paragraph 81, and therefore denies them. Defendant
24 further denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled
25 to any of the relief she seeks.

26 82. Defendant lacks knowledge or information sufficient to form a belief as to
27 the truth of the allegations contained in Paragraph 82, and therefore denies them. Defendant
28

1 further denies that it engaged in any unlawful conduct, and denies that Plaintiff is entitled
2 to any of the relief she seeks.

3 **DISCOVERY TIER**

4 83. Defendant reaffirms its Answers to Paragraphs 1-82.

5 84. Defendant states that the allegations in Paragraph 84 are legal conclusions to
6 which no response is required. To the extent a further response is required, Defendant
7 denies.

8 85. Defendant states that the allegations in Paragraph 85 are legal contentions to
9 which no response is required. To the extent a further response is required, Defendant
10 denies.

11 86. Defendant states that the allegations in Paragraph 86 are legal contentions to
12 which no response is required. To the extent a further response is required, Defendant
13 denies.

14 87. Defendant denies the allegations contained in Paragraph 87.

15 88. Defendant states the allegations contained in Paragraph 88 are legal
16 contentions to which no response is required. To the extent a further response is required,
17 Defendant denies.

18 **PLAINTIFF'S PRAYER FOR RELIEF**

19 89. Defendant acknowledges that Plaintiff seeks the relief sought in the last,
20 unnumbered Paragraph, subparagraphs (A) – (E) of its First Amended Complaint, but
21 denies that Plaintiff is entitled to any of the relief she seeks, and denies that Defendant
22 engaged in any unlawful conduct.

23 **FURTHER AFFIRMATIVE DEFENSES**

24 For its separate and additional defenses, Defendant, without conceding that it bears
25 the burden of proof or persuasion as to any of them, alleges as follows:

26 1. Defendant denies each and every allegation in Plaintiff's First Amended
27 Complaint not specifically admitted in this Answer.
28

2. Some or all of Plaintiff's claims fail to state a claim upon which relief can be granted.

3. At all times during Plaintiff's employment, she was an at-will employee, employed for an indefinite period of time, and could be discharged with or without notice and with or without cause.

4. Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

5. Some or all of Plaintiff's claims are barred in whole or in part for failure to exhaust administrative remedies.

6. To the extent Plaintiff's allegations exceed the reasonable scope and investigation of the underlying Equal Employment Opportunity Commission Charge of Discrimination, they are barred.

7. All employment decisions regarding or affecting Plaintiff were based upon legitimate, non-discriminatory, non-retaliatory, and reasonable business reasons that were in no way related to Plaintiff's sex or any other protected status, or because of Plaintiff's engagement in alleged protected activity. Even if Plaintiff's sex or alleged protected activity was a motivating factor in any employment decision concerning Plaintiff, a claim that Defendant expressly denies, the same decision would have been reached for legitimate, non-discriminatory, non-retaliatory business reasons.

8. If any improper, illegal, or discriminatory acts were taken by any employee of Defendant against Plaintiff, it was outside the course and scope of that employee's employment, contrary to Defendant's policies, and was not ratified, confirmed, or approved by Defendant. Thus, any such actions cannot be attributed or imputed to Defendant.

9. Any improper, illegal, or discriminatory actions by any employee of Defendant were independent, intervening, and unforeseeable acts that were not ratified, confirmed, or approved by Defendant and thus cannot be attributed or imputed to Defendant.

1 10. Defendant did not have actual or constructive knowledge of any of the
2 alleged harassing or retaliatory acts alleged in the First Amended Complaint at any time
3 material to the First Amended Complaint.

4 11. Plaintiff's claims for damages are subject to a statutory damage cap.

5 12. Without conceding Plaintiff has suffered any damages as a result of any
6 alleged wrongdoing by Defendant, Plaintiff has failed to mitigate or minimize her alleged
7 damages.

8 13. Plaintiff's alleged losses and damages, if any, are the result of, and directly
9 related to, Plaintiff's own conduct, actions, and/or failure to act, and not of Defendant's
10 conduct, actions, or failure to act.

11 14. Defendant engaged in good faith efforts to comply with civil rights laws.
12 Moreover, the conduct complained of by Plaintiff, if performed or carried out, was
13 performed or carried out in good faith based upon reasonable grounds for believing such
14 conduct was not in violation of state or federal law, and, therefore, Plaintiff fails to state a
15 claim for punitive or liquidated damages.

16 15. Defendant has in place a clear and well-disseminated policy against
17 discrimination, harassment and retaliation, and a reasonable and available procedure for
18 handling complaints thereof, which provides for prompt and effective responsive action.
19 Some or all of Plaintiff's claims are barred because Plaintiff unreasonably failed to avail
20 herself of the preventive or corrective opportunities provided by Defendant, or to avoid
21 harm otherwise.

22 16. Plaintiff's damages are barred in whole or in part by the doctrine of after-
23 acquired evidence.

24 17. Plaintiff's damages, if any, must be reduced by any income she received
25 since the date of her termination of employment.

26 18. The claims asserted by Plaintiff do not provide a basis for punitive damages.
27
28

1 19. Plaintiff's damages, if any, must be reduced by any short-term disability
2 payments, long-term disability payments, workers' compensation benefits, or
3 unemployment benefits paid to Plaintiff.

4 20. Plaintiff's damages, if any, must be reduced by the damages, benefits and/or
5 settlements Plaintiff received from legal claims asserted against other former employers,
6 prospective employers, or subsequent employers.

7 21. Defendant did not take any actions that were willful, wanton, or in reckless
8 disregard of Plaintiff's rights, thus barring Plaintiff's claim for punitive damages.

9 22. Defendant is not liable for punitive damages because neither Defendant nor
10 any of its officers, directors or employees sufficiently high in its corporate hierarchy
11 committed any act with malice or reckless indifference to Plaintiff's protected rights, or
12 approved, authorized or ratified, or had any actual knowledge of any such acts.

13 23. The Complaint and each purported cause of action alleged therein fails to
14 allege facts sufficient to allow the recovery of punitive damages from Defendant, and
15 punitive damages are contrary to the Arizona Constitution and United States Constitution.

16 24. Defendant asserts that Plaintiff is seeking to recover more than Plaintiff is
17 entitled to recover in this case, and the judgment sought by Plaintiff would unjustly enrich
18 it.

19 25. Plaintiff is not entitled to declaratory relief as there is no actual, present and
20 justiciable controversy between the parties.

21 26. Plaintiff is not entitled to injunctive relief because no severe, immediate, or
22 irreparable harm exists, it has an adequate remedy at law, and the public interest would be
23 disserved by such relief.

24 27. Defendant asserts that Plaintiff's injuries and damages, if any, were caused
25 or contributed to by Plaintiff's own negligence or inattention. Plaintiff, through its own
26 acts and/or omissions, was negligent and careless and a proximate cause of some or all of
27 its alleged damages. Accordingly, Defendant alleges the defenses of comparative
28 negligence and the right to reasonable apportionment, and maintains that any recovery by

1 Plaintiff, if any such recovery is permitted, should be barred or reduced up to and including
2 the whole thereof.

3 28. Defendant asserts that Plaintiff's injuries and damages, if any, were a direct
4 and proximate result of acts or omissions of persons or entities other than Defendant.
5 Therefore, any damages are limited in direct proportion to the percentage of fault
6 attributable to the parties or non-parties at fault.

7 29. Defendant reserves the right to assert any other appropriate defenses,
8 including affirmative defenses, to Plaintiff's claims as the need for such defenses become
9 known during the course of this litigation.

10 WHEREFORE, having fully Answered Plaintiff's First Amended Complaint,
11 Defendant respectfully request that this Court dismiss Plaintiff's First Amended Complaint
12 with prejudice, with Plaintiff to take nothing thereby; and that Defendant recovers its court
13 costs, reasonable attorneys' fees pursuant to A.R.S. Section 12-341.01, and other
14 applicable law; and for such further relief that this Court deems just.

15 RESPECTFULLY SUBMITTED this 13th day of January, 2023.

16 BALLARD SPAHR LLP

17
18 By: /s/ Jay A. Zweig
Jay A. Zweig
Melissa R. Costello
1 East Washington Street
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Phoenix, AZ 85004-2555
Attorneys for Defendant JDM Golf, LLC

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2023, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa County, for filing using the AZTurboCourt System.

I further certify that a copy of the foregoing was sent via e-mail and U.S. mail this same date to:

Nicholas J. Enoch
Kaitlyn A. Redfield-Ortiz
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By: /s/ Vicki Morgan

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